Court Advises Council on how to Properly Circumvent the Constitution

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In the case of Scott Bullock vs. Forest Park, involving warrantless searches for ordinance compliance, Federal District Judge Joan Gottschall has issued a ruling striking down approximately half of the municipality's ordinance, declaring that it was unreasonable and arbitrary.

In recent times, various municipalities around the nation have used their presumed authority to inspect private homes for compliance with various building, fire, and health regulations passed by those municipalities. From the far reaching nature of the regulations, determining compliance involves an almost minute inspection of the buildings involved, and their contents.

Typically, residents are given notice of the impending inspections by mail and by public notice, with the inspections scheduled at the convenience of the inspectors. Residents are required to open their homes to the inspectors "at all reasonable times," and dire civil and sometimes criminal penalties are threatened if the residents fail to provide full cooperation.

Often the municipalities target rented homes in this effort, and use their leverage over landlords to coerce tenants' cooperation. Since landlords are required to obtain permission from the municipalities to do business, they are therefore liable to official hindrance if they object.

When some residents object to this high-handed approach, municipalities harden their stance. Deeming such inspections "for the public good," municipalities claim that Fourth Amendment protections do not apply; when residents demand warrants, municipalities respond with "administrative warrants," which are documents stating that they are warrants, but lack the Constitutional requirement of affidavits of probable cause. Further, municipalities levy monetary charges against residents who demand their presumed Fourth Amendment protection for the production of these incomplete warrants.

Scott Bullock, representing tenants in the Chicago suburb of Park Forest, challenged the village's practice of "inspections" of single family rental dwellings in federal District Court in December of 1995, asserting that it placed the tenants in the category of "second class citizens."

Judge Joan Gottschall continued "Fourth Amendment concerns for privacy and security are profoundly implicated when a government official invades the sanctity of a person's home. The inspections here are unquestionably invasive. Warrants are served by an inspector and a police officer. Every room in a residence is inspected, including bedrooms and bathrooms."

The Fourth Amendment of which Judge Gottschall was expressing concern states: "The right of the people to be secure in their persons, houses,

papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

She further held that the law was not based on "reasonable legislative and administrative standards," and declared "this court can find nothing in the record to indicate why the Village undertook such an intrusive inspection program solely for rented single-family homes and can find nothing that limits in any way the scope of the inspections."

This is the remaining area the Fourth Amendment protects, as the NRA sponsored HR 666, passed in 1995, lack provision to eliminate Fourth Amendment protection in this remaining area.

Further agreeing with the resident's complaint, Judge Gottschall also ruled that the $60 fee imposed upon residents who demanded a search warrant to be an unconstitutional restriction on the exercise of their Fourth Amendment rights. This is in agreement with other courts, which have long held that no governmental entity may infringe upon citizens' rights by imposing fees for their exercise, effectively turning these rights into purchased governmental privileges to be granted or denied at the whim of that government entity.

The court also stated that "explicit consent" for search was required of the tenants in whom Fourth Amendment rights are vested, not the consent of the landlords.

CHILLING NOTE ACCOMPANIES THE RULING

Another federal case involving Constitutional limitations on government, the so-called "Lopez" decision, struck down as unconstitutional a federal law which enacted a "gun free zone" around schools. The justices of the Supreme Court in "Lopez" worded their ruling with what amounted to instructions to the legislative body who enacted the law. The instructions specified how the legislative body could craft a law which would circumvent the constitutional limitations, against the interest of the principals, the sovereign citizenry.

Following the encouragement of the court, Congress subsequently passed such a law worded in the fashion suggested by the court. The original intent of the law, declared unconstitutional by the justices as an unlawful infringement upon the rights of the sovereign citizens, was resurrected in the subsequent legislation. Interested parties are therefore required to again adjudicate a challenge to a law already overturned, at great expense and uncertainty, against the complicity of the court itself.

This practice was repeated in the "inspections" case, with the court instructing the municipality to state the necessity of inspection for the end of "public safety." Further instructions were implicit in the court's ruling, with the guidance that single family rental dwellings not be singled out, and that some limitation be placed upon the scope of the searches.

In practice, however, this results in a greater infringement, for the municipality is instructed to include all dwellings, and to include simple but effectively meaningless language "limiting" the scope of search. It is all but stated that such compounding of the invasion will suffice to satisfy the court.

Whatever the eventual outcome, it is clear that we have come a long way since William Pitt, addressing the English House of Commons, stated "The poorest man may, in his cottage, bid defiance to the Crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter. All his force may not cross the threshold of the ruined tenement."

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